



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 Part 52

[EPA-R02-OAR-2016-0061, FRL-9943-03-Region 2]

Disapproval of Air Quality Implementation Plans; Puerto Rico;
Attainment Demonstration for the Arecibo Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a State Implementation Plan, submitted by the Commonwealth of Puerto Rico to the EPA on January 30, 2015, for the purpose of providing for attainment of the 2008 Lead National Ambient Air Quality Standards in the Arecibo 2008 Lead nonattainment area. While the SIP includes all of the required elements for the Arecibo Area, the EPA proposes disapproval because the dispersion modeling analysis does not demonstrate attainment of the lead standard.

DATES: Comments must be received on or before **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R02-OAR-2016-0061** at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What Action is the EPA Proposing?
- II. What is the Background Information for this Proposal?
- III. What is Included in Puerto Rico's Proposed SIP Submittal?
- IV. What is the EPA's Analysis of Puerto Rico's Attainment Plan Submittal?
 - a. Modeling Approach
 - b. Modeling Results
- V. What Are the Consequences of a Disapproved SIP?
 - a. What Are the Act's Provisions for Sanctions?

- b. What Federal Implementation Plan Provisions Apply if a State Fails To Submit an Approvable Plan?
 - c. What Are the Ramifications Regarding Conformity?
- VI. What are the EPA's Conclusions?
- VII. Statutory and Executive Order Reviews
 - a. Executive Order 12866: Regulatory Planning and Review
 - b. Paperwork Reduction Act
 - c. Regulatory Flexibility Act
 - d. Unfunded Mandates Reform Act
 - e. Executive Order 13132: Federalism
 - f. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - g. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - h. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - i. National Technology Transfer Advancement Act

I. What Action is the EPA Proposing?

The Environmental Protection Agency (EPA) is proposing to disapprove Puerto Rico's State Implementation Plan (SIP), as submitted through the Puerto Rico Environmental Quality Board (PREQB) to the EPA on January 30, 2015, for the purpose of demonstrating attainment of the 2008 Lead National Ambient Air Quality Standards (NAAQS) in the Arecibo 2008 Lead nonattainment area (hereafter referred to as the "Arecibo Area" or "Area"). The Arecibo Area is comprised of a portion of Arecibo County in Puerto Rico with a 4 kilometer radius surrounding The Battery Recycling Company, Inc. (hereafter referred to as "TBRCI"). Puerto Rico's lead attainment plan for the Arecibo Area includes a base year emissions inventory, a modeling demonstration of lead attainment, an analysis of reasonably available control measures (RACM)/reasonably available control technology (RACT), a reasonable further progress (RFP) plan, and contingency measures.

The EPA proposes to determine that Puerto Rico's attainment plan for the 2008 Lead NAAQS for the Arecibo Area does not meet the applicable requirements of the Act. The EPA is proposing to disapprove Puerto Rico's attainment plan for the Arecibo Area because the dispersion modeling analysis does not demonstrate attainment of the lead standard in all areas, as discussed in Section IV of this proposed rulemaking.

II. What is the Background Information for this Proposal?

On November 12, 2008 (73 FR 66964), the EPA revised the Lead NAAQS, lowering the level from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $0.15 \mu\text{g}/\text{m}^3$ calculated over a three-month rolling

average. The EPA established the 2008 Lead NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to lead emissions.

Following promulgation of a new or revised NAAQS, the EPA is required by the Clean Air Act (CAA) to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On November 22, 2010 (75 FR 71033), the EPA promulgated initial air quality designations for the 2008 Lead NAAQS, which became effective on December 31, 2010, based on air quality monitoring data for calendar years 2007 – 2009, where there was sufficient data to support a nonattainment designation.

Designations for all remaining areas were completed on November 22, 2011 (76 FR 72097), which became effective on December 31, 2011, based on air quality monitoring data for calendar years 2008 – 2010. Effective on December 31, 2011, the Arecibo Area was designated as nonattainment for the 2008 Lead NAAQS, based on air quality monitoring data from June 2010. This designation triggered a requirement for Puerto Rico to submit a SIP revision by July 1, 2013 with a plan for how the Area would attain the 2008 Lead NAAQS, as expeditiously as practicable, but no later than December 31, 2016.

III. What is Included in Puerto Rico's proposed SIP Submittal?

In accordance with section 172(c) of the CAA and 40 C.F.R. § 51.117, Puerto Rico's attainment plan for the Arecibo Area includes: (1) an emissions inventory for the plan's base year (2011); and (2) an attainment demonstration. The attainment demonstration includes: technical analyses that locate, identify and quantify sources of emissions contributing to violations of the 2008 Lead NAAQS; a modeling analysis of an emissions control strategy for TBRCI facility that does not attain the Lead NAAQS by the attainment year (2016); and contingency measures required under section 172(c)(9) of the CAA.

IV. What is the EPA's Analysis of Puerto Rico's Attainment Plan Submittal?

The CAA requirements (*see, e.g.*, section 172(c)(4)) and the Lead SIP regulations found at 40 C.F.R. § 51.117) require states to employ atmospheric dispersion modeling for the demonstration of attainment of the Lead NAAQS for areas in the vicinity of point sources listed in 40 C.F.R. § 51.117(a)(1), as expeditiously as practicable. Section 302(d) of the CAA includes the Commonwealth of Puerto Rico in the definition of the term "State." The demonstration must also meet the requirements of 40 C.F.R. § 51.112 and 40 C.F.R. Pt. 51, App. W, and include inventory data, modeling results, and emissions reduction analyses on which the Commonwealth has based its projected attainment. All these requirements comprise the "attainment plan" that is required for lead nonattainment areas.

The Puerto Rico modeling analysis was prepared using the EPA's preferred dispersion modeling system, the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) consisting of the AERMOD model and two data input preprocessors AERMET, and AERMAP, consistent with the EPA's Modeling Guidance¹ and 40 C.F.R. § 51.117. More detailed information on the AERMOD Modeling system and other modeling tools and documents can be found on the EPA Technology Transfer Network Support Center for Regulatory Atmospheric Modeling (SCRAM) (<http://www.the EPA.gov/ttn/scram/>) and in Puerto Rico's January 30, 2015 SIP submittal, in the docket for this proposed action (EPA-R04-OAR-2014-0220) on the www.regulations.gov website. A brief description of the modeling used to support the Commonwealth of Puerto Rico's attainment demonstration is provided below.

a. Modeling Approach

The following is an overview of the air quality modeling approach used in Puerto Rico's SIP submittal on January 30, 2015.

¹ 40 Part 51 Appendix W (The EPA's *Guideline on Air Quality Models*) (November 2005) located at http://www.epa.gov/ttn/scram/guidance/guide/appw_05.pdf.

AERMOD pre-processors, AERMET and AERMAP were used to process one year of site-specific meteorological data from 1992-1993 collected at the PREPA Cambalache station, based on PREQB's land use classifications, in combination with meteorological data from the San Juan station for substitution of the site-specific missing data.

TBRCI emissions points were divided into stack, area source and volume source fugitive emissions. The volume source is the main process building. The area source was selected for the modeling of the emissions generated from the vehicle movement between the carbon, scrap and soda ash storage areas.

The EPA LEADPOST processor is used for the calculation of the Lead rolling 3-month average using the monthly modeling results. Lead background concentration was omitted because the PREQB does not have an Arecibo Lead air quality monitor that is not affected by the emissions from TBRCI facility that would be representative of the Arecibo area. The PREQB addressed this issue by using a multi-source modeling scenario with projected or controlled emissions to 2016 of the facilities in the six municipalities (Arecibo, Barceloneta, Ciales, Florida Hatillo and Utuado), including the Arecibo airport.

The PREQB developed the 2011 base year and the 2016 control strategy emissions inventory for input into the air quality model to perform the dispersion modeling. The 2016 emissions inventory was used in the multi-source modeling scenario (see modeling protocol).

b. Modeling Results

The Lead NAAQS compliance results of the AERMOD modeling are summarized in Table 1 below. As can be seen in Table 1, the maximum 3-month rolling average predicted impact with the meteorological data (2006-2010) is more than the 2008 Lead NAAQS of $0.15 \mu\text{g}/\text{m}^3$ for one set of AERMOD modeling runs. Output from the LEADPOST processor which details all of the concentrations can be found in the body of the January 30, 2015 submittal.

Table 1. Summary of Modeling Results

Pollutant	Avg. Time	Maximum Monthly Predicted Impact ($\mu\text{g}/\text{m}^3$)	Background conc. ($\mu\text{g}/\text{m}^3$)	Maximum 3-high avg. predicted Impact ($\mu\text{g}/\text{m}^3$)	NAAQS ($\mu\text{g}/\text{m}^3$)	Impact Greater Than NAAQS
Pb	3-month rolling	0.34729	0.0	0.3313	0.15	Yes

The post-control, which includes the RACM and RACT analysis, resulted in a predicted impact of $0.33 \mu\text{g}/\text{m}^3$. This data indicates the control scenario of total full enclosure of TBRCI will not result in the emission reductions necessary to show attainment.

The EPA has reviewed the modeling that Puerto Rico submitted to support the attainment demonstration for the Arecibo Area and has determined that this modeling is consistent with CAA requirements, Appendix W and the EPA guidance for lead attainment demonstration modeling. However, the modeling analysis does not demonstrate attainment with the Lead NAAQS. Therefore, the EPA proposes to disapprove Puerto Rico's Lead SIP for the Arecibo Area. The EPA understands that the PREQB is in the process of revising the attainment demonstration modeling to demonstrate attainment in the Arecibo area, and address this deficiency.

V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the CAA. The CAA provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if the Commonwealth fails to submit a plan revision that corrects the deficiencies identified by the EPA in its disapproval.

a. What Are the Act's Provisions for Sanctions?

If the EPA disapproves a required SIP or component of a SIP, such as the Attainment Demonstration SIP, CAA § 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after the EPA disapproves the SIP. Under the EPA's sanctions regulations, 40 C.F.R. §

52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under CAA § 173. If the Commonwealth fails to submit a SIP for which the EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds in the nonattainment area. The EPA also has authority under CAA § 110(m) to sanction a broader area, but is not proposing to take such action in today's rulemaking.

b. What Federal Implementation Plan Provisions Apply if a State Fails To Submit an Approvable Plan?

In addition to sanctions, if the EPA finds that a State/Commonwealth failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, the EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

c. What Are the Ramifications Regarding Conformity?

One consequence of the EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected metropolitan planning organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval. (40 C.F.R. § 93.120(a)(2))

This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 C.F.R. § 93.104(f) during a 12-month lapse grace period² may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

VI. What are the EPA's conclusions?

The EPA is proposing to disapprove Puerto Rico's Lead attainment plan for the Arecibo Area. The EPA has determined that the SIP does not meet the applicable requirements of the CAA.

² Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008. (73 FR 4423-4425)

Therefore, the EPA is proposing to disapprove Puerto Rico's January 30, 2015 SIP submittal since the modelling analysis does not demonstrate attainment of the NAAQS.

Since the time that Puerto Rico submitted the SIP to the EPA, the PREQB formally revoked TBRCI's operating and construction permits on August 19, 2015. The EPA understands that Puerto Rico is in the process of revising the attainment demonstration modeling to address this change in TBRCI's operating status. Therefore, while we are proposing disapproval, the EPA fully expects Puerto Rico to submit a new Attainment Demonstration SIP to reflect this change in TBRCI's operating status in the Arecibo Area. If the Attainment Demonstration SIP is submitted to the EPA as a SIP revision, the EPA will review it and, if it is approvable, will withdraw the proposed disapproval.

VII. Statutory and Executive Order Reviews

a. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

b. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

c. Regulatory Flexibility Act

I certify that this action will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action will not impose any requirements on small entities. This action merely disapproves Puerto Rico's Lead SIP as not meeting Federal requirements and imposes no additional requirements beyond those imposed by the plan.

d. Unfunded Mandates Reform Act

This action does not impose any additional enforceable duty beyond that which is required by Puerto Rico law because this rule disapproves a SIP revision and it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

e. Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the Commonwealth, on the relationship between the national government and the Commonwealth, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves the Puerto Rico Lead SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

f. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000);

g. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it disapproves the Puerto Rico Lead SIP.

h. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant energy action,” this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

i. National Technology Transfer Advancement Act

In reviewing SIP submissions, the EPA’s role is to approve state or commonwealth choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the Commonwealth to use voluntary consensus standards (VCS), the EPA has no authority to disapprove a commonwealth submission for failure to use VCS. It would thus be inconsistent with applicable law for the EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and Recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: February 22, 2016.

Judith Enck,
Regional Administrator,
Region 2.

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